



PSD CORRECTIONS

#03-68(APCB)

Overview

Amends 326 IAC 2-2-1, 326 IAC 2-2-6, and 326 IAC 2-2-12 concerning corrections to the prevention of significant deterioration (PSD) requirements.

Citations Affected

Amends 326 IAC 2-2-1, 326 IAC 2-2-6, and 326 IAC 2-2-12.

Affected Persons

Sources subject to PSD permitting requirements in Indiana.

Reason for the Rule

The rule needs to be amended to make corrections to the Prevention of Significant Deterioration (PSD) requirements identified by the United States Environmental Protection Agency (U.S. EPA) in the January 15, 2003 Federal Register (68 FR 1970).

Economic Impact of the Rule

This rule action is not anticipated to have an economic impact on sources subject to PSD permitting requirements.

Benefits of the Rule

This rulemaking will ensure that Indiana's PSD program will remain an approved state program rather than a delegated federal program and that appeals of permits will be made in a state rather than federal forum.

Description of the Rulemaking Project

On September 30, 1980, U.S. EPA delegated to IDEM the authority to implement and enforce the federal PSD program. On April 11, 2001, IDEM

submitted a request to U.S. EPA to revise its State Implementation Plan (SIP) to incorporate its PSD regulations. On February 1, 2002, IDEM submitted to U.S. EPA a revised request resolving issues identified by U.S. EPA during an informal review.

On January 15, 2003, U.S. EPA conditionally approved the rules submitted on February 1, 2002, by the State of Indiana as revisions to its SIP, for PSD provisions for attainment areas. The approval is conditioned upon Indiana correcting a minor deficiency within one year of the effective date of the federal approval. The deficiency was the inadvertent omission of "minor new source review permits" from the exemption to the definition of "major modification". Other corrections related to the Federal Register notice are also addressed in this rulemaking.

The Federal definition of "major modification" excludes from a physical change or a change in the method of operation the use by a stationary source of an alternative fuel or raw material which the source was capable of accommodating before January 1, 1975, unless the change is prohibited under any permit condition established after January 6, 1975 pursuant to 40 CFR section 52.21 or under regulations approved pursuant to 40 CFR Subpart I or 40 CFR section 51.166. The federal rules in 40 CFR Subpart I (40 CFR Part 51.160 through 40 CFR Part 51.166) contain requirements pertaining to minor new source review permits and major new source review permits in both attainment and nonattainment areas. Indiana's rule 326 IAC 2-2-1(x)(2)(E)(i) provides that the use of an alternative fuel or raw material is a change in the method of operation if prohibited by a condition of a permit issued pursuant to the authority of the PSD or major new source review programs, but does not address other new source review provisions. The

omission of the reference to minor new source review provisions in 326 IAC 2-2-1(x)(2)(E)(i) was inadvertent. Indiana is not aware of any new source review permits that were not issued pursuant to PSD or major new source review authority that contains restrictions on the use of an alternative fuel or raw material; however, Indiana agreed to address this inadvertent omission within one year of the effective date of the conditional approval.

U.S. EPA granted conditional approval of the incorporation of the PSD rules into the SIP because it is unlikely that Indiana has limited the ability of any sources to use alternative fuels or raw materials through previous minor new source review permits and because Indiana committed in a December 12, 2002, letter to correct this minor deficiency within one year of the effective date of the federal approval. If Indiana does not correct this deficiency within one year of the federal action, U.S. EPA will initiate withdrawal of federal approval of the PSD rules into the SIP.

U.S. EPA also identified the following minor corrections to the State rules:

- In 326 IAC 2-2-1(y)(5), the words “and this subdivision” are superfluous.
- In 326 IAC 2-2-1(gg), “U.S. EPA” should be replaced with “IDEM” in the following sentence: “U.S. EPA shall give expedited consideration to permit applications....”
- In 326 IAC 2-2-6(b)(5), the phrase “whichever is later” is not necessary.

These wording differences do not constitute approvability issues; however, IDEM agreed to address them upon reopening the PSD rules.

In addition, upon review of U.S. EPA comments in the Federal Register notice, IDEM realized that in 326 IAC 2-2-12, the date of January 1, 2002, may be confusing. This date was intended to be the effective date of the Indiana PSD rule amendments. Since the department did not know at the time of final adoption what the actual effective date of the rule would be, an estimated date of January 1, 2002, was inserted. The actual effective date was January 19, 2002, so the draft rule substitutes this date for January 1, 2002. There should be no effect on sources from this correction.

Scheduled Hearings

First Public Hearing: September 3, 2003, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana.

Second Public Hearing: December 3, 2003, at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana.

Consideration of Factors Outlined in Indiana Code 13-14-8-4

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
 - (A) human, plant, animal, or aquatic life; or
 - (B) the reasonable enjoyment of life and property.

Consistency with Federal Requirements

The draft rules are consistent with federal requirements.

Rulemaking Process

The first step in the rulemaking process is publication of one of three types of notices in the *Indiana Register*. The first type of notice is a first notice of comment period. The first notice of comment period includes a discussion of issues and opens a first comment period. A second notice is then published which contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the

draft rule. The second type of notice is a notice under IC 13-14-7 (a “section 7” notice). A section 7 notice contains a determination by the commissioner under IC 13-14-9-7 that only one comment period is required because the policy alternatives available are so limited that there would be no benefit to the environment or affected persons. It contains the commissioner’s determination and findings, the draft rule, a request for written comments and a notice of first meeting/hearing. The third type of notice is a notice under IC 13-14-9-8 (a “section 8” notice). A section 8 notice contains a determination by the commissioner under IC 13-14-9-8 that no public comment periods are required for one of the specific reasons listed in the statute. It contains the commissioner’s determination and findings, the draft rule and a notice of first meeting/hearing. This rulemaking was initiated with a section 7 notice. In each case the Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Chris Pedersen, Regulatory Development Section, Office of Air Quality, (317) 233-6868 or (800) 451-6027 (in Indiana).